IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1696 OF 2003

1. Ismailbhai Kanga,)
of Mumbai, Indian Inhabitant,)
residing at Kalpataru, 39,)
Dr. G. Deshmukh Marg, Mumbai)
- 400 026.)

2. Taherbhai Mamajiwala)
of Mumbai, Indian Inhabitant)
residing at Y.A. Mamajiwala)
& Sons Pvt. Ltd. 136, Ebrahim)
Rehmatulla Road, Mumbai - 400)
003.)

3. Kamruddin A. Motiwala,)
Indian Inhabitant of Mumbai,)
residing at C/o. F.K.Motiwala)
92, Sarang Street, Mumbai -)
400 003.)
Appellants 1 to 3 all,Trustees)
of Public Trust known as Abdul)
Hussein K.Motiwalla Charitable)
Trust, having their office at)
41/47, Dr. Babasaheb Ambedkar)
Road, Kala Chowki, Mumbai -)
400 023.) ... Appellants
(Orig. Plaintiffs)

Versus

1. Maharashtra Housing & Area)
Development Authority.)

2. Executive Engineer (R.R.Cell))
MHADA.)

3. Dy. Secretary,)
Pradhikaran)
Respondents 1 to 3 having)
their office at Grihanirman)
Bhavan, Kala Nagar, Bandra)
(East), Mumbai - 400 051, and)

4. State of Maharashtra)
having their office at)
Mantralaya, Mumbai - 400 032.) ... Respondents
(Orig. Defendants)

Mr. P.G. Karande for the appellants.

Mr. G.W. Mattos with Smt. G.P. Malekar, A.G.P. for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 20TH & 24TH JANUARY, 2005.

ORAL JUDGMENT:-

1. The appellants are the original plaintiffs in L.C. Suit No.534 of 2000 filed in the City Civil Court at Bombay. They are the trustees of a public trust known as Abdul Hussein K. Motiwala Charitable Trust (for convenience, "the plaintiffs"). The respondents are the original defendants (for convenience, "the defendants"). Defendant 1 is the Maharashtra Housing & Area Development Authority (for short, "MHADA"). Defendant 2 is the Executive Engineer of MHADA. Defendant 3 is the Deputy Secretary, Pradhikaran and defendant 4 is the State of Maharashtra.

2. The plaintiffs' case, as is apparent from the plaint, is that they are the owners of the buildings known as "BADAK CHAWLS" bearing Municipal Nos.41-B, 41-BA, 41-CD, 41-CA, 41-E, 41-F, 41-G and 41-H situate at Dr. Babasaheb Ambedkar Road, bearing Cadestral Survey No.798 of Mazgaon Division and situate at 'E' Ward of Bombay Municipal Corporation (for convenience, "the suit property").

3. According to the plaintiffs, defendant 4 served notice for acquisition of the suit property under section 41(1) of the Maharashtra Housing & Area Development Authority Act, 1976 (for short, "the MHADA Act"). The said notice stated that on a representation from the

Mumbai Building Repairs and Reconstruction Board, (for short, "the said Board") it appears to the Government of Maharashtra that in order to enable the said Board to discharge its function or to exercise its powers or to carry out its proposals and plans, it is necessary that the lands on which the suit property is situated is acquired in exercise of powers under section 41(1) of the MHADA Act. The notice further stated that the State of Maharashtra proposed to acquire the suit property. The plaintiffs were asked to show cause, if any, within a period of 30 days from the date of publication of the said notice in the Maharashtra Government Gazette, why the suit property should not be acquired. In the Schedule to the said notice, the suit property was described.

4. The plaintiffs obtained a report from their architects - M/s. Talib & Associates. The said report is dated 2/4/1998. According to the plaintiffs, the said report was submitted by the architects after inspecting the suit property. The said report stated that the suit property is structurally safe and sound. A copy of the same was annexed by the plaintiffs to their written statement submitted by them in May, 1998, stating therein that the proposal for acquisition was malafide, illegal and bad in law as the suit property was not in a dilapidated condition.

5. It appears that, thereafter, defendant 4 issued a notification dated 31/5/1999 intimating that the

Government of Maharashtra has decided to acquire the suit property. According to the plaintiffs, the plaintiffs served a notice dated 16/11/1999 upon defendant 1 under section 173 of the MHADA Act. The plaintiffs also served a statutory notice on defendant 4 under section 80 of the Civil Procedure Code (for short, "the C.P.C.") and filed the instant suit praying that it be declared that the impugned notice of inquiry dated 15/3/1997 and the notification dated 31/5/1999 are bad in law, null and void and without any legal effect.

6. The defendants filed their written statement in which they, inter alia, contended that the condition of the suit property was very bad and it was in need of heavy structural repairs; that the Board, therefore, after making detailed enquiries and on careful consideration proposed to reconstruct the building and obtained sanction for the proposed construction from the Municipal Corporation as far back as on 5/1/1996 and made a proposal to the Government to acquire the suit property. The defendants further contended that by the impugned notice dated 15/3/1997, defendant 4 called upon all the interested persons to show cause as to why the suit property should not be acquired and after considering all the aspects and upon hearing the plaintiffs, decided to acquire the suit property and ultimately issued the impugned notification dated 31/5/1999.

7. The trial court framed necessary issues. Plaintiff 3 filed his affidavit containing evidence-in-chief. The

plaintiffs examined their architects M/s. Talib & Associates. The defendants examined DW-1 Bajirao Soma Walekar, the Deputy Engineer, MHADA, DW-2 Kisan Jayantilal Bhat, the photographer, who had taken the photographs of the suit property, DW-3 Dayanand Girdharlal Pandya, the Architect of the defendants, DW-4 Laxmidas Dayabhai Shah, another architect of the defendants and DW-5 Vasant Damu Rathod, Secretary to the Government of Maharashtra, Housing Department.

8. After perusing the evidence on record, the trial court, by the impugned order, dismissed the plaintiffs' suit. The trial court held that the plaintiffs had failed to prove that the impugned notice of inquiry and the notification are bad in law, arbitrary and null and void. The plaintiffs had failed to prove that they are entitled to a permanent order of injunction against the defendants restraining them from taking any action in pursuance of the impugned notification. The trial court further held that defendants 1 and 2 had failed to prove that the trial court had no jurisdiction to entertain the instant suit. The trial court came to a conclusion that defendants 1 and 2 had complied with the provisions of the MHADA Act in all respect and that the acquisition of the suit property is proper; that defendants 1 and 2 had proved that the suit property is in most dangerous and ruinous condition and that the same is required to be reconstructed; that the impugned notification was issued after giving the plaintiffs full opportunity and that the suggestions, objections, submissions made on behalf of

the plaintiffs were duly considered by the defendants prior to issuance of the impugned notification and that defendant 4 had proved that the impugned notification is properly issued. Being aggrieved by this judgment and decree, the plaintiffs have approached this court.

9. I have heard, at some length, the learned counsel appearing for both sides. With the assistance of the learned counsel, I have also gone through the necessary record.

10. Mr. Karande, the learned counsel appearing for the plaintiffs assailed the impugned judgment on several counts. He firstly contended that the defendants have failed to follow the procedure prescribed under section 41 and other relevant provisions of the MHADA Act. He contended that the objections of the plaintiffs were not considered by the defendants. He submitted that it is the case of the defendants that the plaintiffs' objections were considered. If that is so, the defendants ought to have made the result of the consideration thereof known to the plaintiffs. He submitted that it was necessary for the defendants to pass a speaking order and, inasmuch as no speaking order is passed and communicated to the plaintiffs, the acquisition order is liable to be set aside. The learned counsel drew my attention to the report of the architects of the plaintiffs - M/s. Talib & Associates and contended that in the said report, it is categorically stated that the suit property is not in a dangerous

condition. He submitted that the said report was submitted by the plaintiffs' architects after proper inspection of the suit property. The learned trial judge, therefore, ought to have considered the said report in its proper perspective. It was improper on the part of the learned trial judge to discard the said report merely because it was submitted by the plaintiffs' architects. Mr. Karande submitted that, in fact, the evidence adduced by the defendants indicates that the defendants' architects have not carried out any proper inspection of the suit property at all. In fact, DW-3 Dayanand Pandya has categorically stated that he has only carried out visual inspection. He has also admitted that he did not find out any wall out of plumb which was likely to fall down and he did not find any columns or beam which were required to be immediately replaced. The learned counsel submitted that, therefore, the report submitted by M/s. Talib & Associates was the correct report and the learned trial judge ought to have placed reliance on that.

11. The learned counsel relied on section 2(36) of the MHADA Act, which defines structural repairs. He contended that as regards structural repairs, the Board must form its opinion which is not done here. He contended that DW-1 Bajirao Walekar has stated that the BMC and MHADA used to publish the notice for information regarding dilapidated buildings and those requiring repairs and that the suit property has not been shown in such published notices. He, therefore, submitted that

wrong parameters have been applied by the defendants while taking the decision to acquire the suit property.

12. The learned counsel further submitted that there is nothing to indicate that any scheme or plan was in existence before the decision to acquire the suit property was taken and, therefore, the entire acquisition is liable to be set aside. In this connection, the learned counsel relied on the judgment of the Supreme Court in **Maharashtra Housing and Area Development Authority and Another v. Gangaram and Others, (1994) 2 SCC 489.**

13. The learned counsel also contended that the preliminary notice under section 41(1) of the MHADA Act must not only specify the purpose of acquisition of land but must also specify the plans or projects. Inasmuch as the said particulars are not found in the impugned notice, that notice and the notification issued pursuant thereto must be set aside. In this connection, he relied on the judgment of this court in **Shyamrao Rajeshwarrao Potdukhe and others v. State of Maharashtra and others, 1993 Mh.L.J. 841.**

14. The learned counsel also relied on the judgment of this court in **The Property Owners' Association and others v. The State of Maharashtra and others, 1992(1) Bom CR 152.** He laid particular stress on the observations of this court that in every land acquisition proceedings under the Land Acquisition Act, the officer commences

proceedings only after the State Government or the Commissioner of the Division approves the proposal that the lands are required for a public purpose and it is futile to suggest that the Land Acquisition Officer will always surrender his statutory duties and straightaway proceed to acquire the buildings only because the Board and the State Government have given prior approval. It is further stated that the Land Acquisition Officer is required to ascertain as to whether the proposal made is viable and also whether the area sought to be acquired is required for reconstruction of the building. The learned counsel urged that these observations of the Division Bench of this court are clearly attracted to the facts of the present case. There is no indication either in the evidence or in the record that there is a proper consideration of the question whether the proposal is viable or the acquisition is really necessary.

15. As against this, Mr. Mattos, the learned counsel appearing for the defendants submitted that the trial court had no jurisdiction to entertain this suit. He drew my attention to paragraph 14 of the plaint, which reads thus:

> "The claim is for declaration and injunction only. The Plaintiffs are in possession of the properties. The claim in suit is not susceptible to monetary evaluation. However, the claim is valued

at Rs.600/- for the purpose of Court Fees

and jurisdiction."

He drew my attention to section 6(iv)(j) of the Bombay Court Fees Act and contended that the expression not susceptible to monetory evaluation means that the cause of action is such that it cannot be evaluated in terms of money. He drew my attention to the cross-examination of Kamruddin Motiwala, plaintiff 3, where plaintiff 3 has said that the property which is involved might be approximately valued at Rs.10 lacs, and contended that inasmuch as in the present case, the plaintiffs themselves have valued the suit property at Rs.10 lacs, the trial court could not have had jurisdiction to entertain this suit. In this connection, he relied on the judgment of this court in **Kishore Premlal Dalaya v. Ukaji Premaji, Bombay Law Reporter Vol.LXXV 604**.

16. The learned counsel further contended that the impugned notice is dated 15/3/1997 and the impugned notification is dated 31/5/1999. The suit is filed on 25/1/2000. Notice under section 173 is dated 16/11/1999. Drawing my attention to section 173 of the MHADA Act, the learned counsel contended that the present suit is clearly out of limitation. In this connection, he relied on the judgment of this court in **Arun Construction Co. v. The Bombay Housing and Area Development Board and another, 2002(2) Bom.C.R. 450**.

17. The learned counsel contended that the defendants have followed the necessary procedure. This is clear from the evidence adduced by the defendants and the record. The learned counsel contended that the objections of the plaintiffs have been properly considered by the defendants and that is also evident from the evidence and the record. He contended that it is not necessary to communicate the decision to the plaintiffs. In this connection, the learned counsel relied on the judgment in **Mukund Porobo Colvalkar v. Union of India and another, AIR 1970 Goa, Daman & Diu, 120**. The learned counsel further contended that the evidence of the witnesses and the photographs, which have been exhibited establish that the suit property is in ruinous condition and that the same needs to be demolished and reconstructed. He drew my attention to the written statement filed by the plaintiffs before defendant 3 wherein the plaintiffs have stated that the plaintiffs are ready and willing to develop at their own cost the entire property and give free of cost accommodation to the tenants and occupants. The learned counsel contended that the present suit is merely an attempt to stall the acquisition and reconstruction as the plaintiffs themselves want to develop the property and profit therefrom. He submitted that if that was so, at the earliest stage, the plaintiffs could have approached the authorities with 70% of the tenants's consent as per Regulation 33(7) of the Development Control Regulations. The plaintiffs have not done so.

18. As regards the contention that there is no evidence to indicate that any scheme or proposal was in existence, the learned counsel contended that the evidence on record establishes that the scheme was, in fact, in existence. However, the existence of a scheme is not necessary and on that count, acquisition proceedings cannot be set aside. In this connection, he relied upon the judgment of the Supreme Court in **Jaipur Development Authority v. Sita Ram and others, AIR 1997 SC 1104**.

19. To counter the arguments of Mr. Mattos that the suit is barred by law of limitation, Mr. Karande, the learned counsel appearing for the plaintiffs submitted that the impugned notice and the notification are issued by the State of Maharashtra. Therefore, the challenge is to the said notice and notification and, therefore, notice under section 80 of the CPC was given. By way of abundant caution, notice under section 173 of the MHADA Act was also given. Hence, the contention that the suit is barred by law of limitation based on notice under section 173 of the MHADA Act deserves to be rejected.

20. As regards the valuation of the suit, the learned counsel contended that the plaintiffs have not prayed for possession of the suit property. There is intrinsic evidence to show that the possession is with the plaintiffs. He submitted that the suit is filed on 25/1/2000. The injunction order was passed on 4/2/2000 restraining the defendants from taking any action. On

16/1/2002, the injunction order was made absolute. He contended that the possession receipt, which is annexed by the defendants to their affidavit would only indicate the illegality committed by the defendants. He further contended that the plaintiffs are seeking enforcement of rights flowing from statutory obligation of the defendants under section 81 and other provisions of the MHADA Act and, therefore, the suit is correctly valued.

21. Before I deal with the rival contentions, I must refer to the judgment of the Supreme Court in **Gangaram's case (supra)**. While considering section 41 of the MHADA Act, the Supreme Court has observed that the scheme must exist before initiating acquisition proceedings and in the absence of such scheme, the land owners cannot exercise their right of objection under proviso to section 41(1) of the MHADA Act, which is a valuable right.

22. I may also refer to the judgment cited by Mr. Mattos in **Jaipur Development Authority's case (supra)** where the Supreme Court was dealing with a notification issued under section 52 of the Rajasthan Urban Improvement Act, 1959 for acquisition of land. Some what similar contention was raised therein. In that case, the Supreme Court observed that the view of the Rajasthan High Court that framing of a scheme is a precondition for acquisition of land is not a correct proposition of law. The notification for acquisition cannot be quashed on that count. In my opinion, however, in the facts of this

case, it may not be really necessary to go into this aspect because the evidence to which I shall soon advert does indicate that the sanctioned plan was, in fact, in existence. Assuming, however, that a sanctioned plan or scheme was not in existence in the later judgment in **Jaipur Development Authority's case (supra)** the Supreme Court has held that framing of a scheme is not a condition precedent to the acquisition of land. Therefore, even absence of scheme will not be an impediment in the acquisition proceedings.

23. It is also necessary to refer to the judgment of this court in **Shyamrao Rajeshwarrao Potdukhe's case (supra).** In that case, there was a challenge to a notice issued under section 41(1) of the MHADA Act. This court observed that before the State Government exercises its power under section 41(1) of the MHADA Act, there must be sufficient material in the form of proposals, plans or projects before it and the preliminary notice must contain sufficient and adequate material so as to satisfy the requirements of section 41 thereby preventing the land holders and persons interested from raising objections effectively. In my opinion, in the instant case, it cannot be said that there was no proposal or plan or project. However, it appears that the notice issued under section 41 does not contain all the necessary particulars. The question is whether in view of the decision of this court in **Shyamrao Potdukhe's case (supra)**, the acquisition will have to be set aside.

24. In **Shyamrao Potdukhe's case (supra)**, this court was dealing with a petition filed under Article 226 of the Constitution of India. Here, I am concerned with a situation where the plaintiffs have filed a suit challenging the notice issued under section 41(1) of the MHADA Act and a notification issued pursuant thereto. The evidence is led by both sides. Relevant documents are filed by both parties. It appears from the pleadings of the parties and from the evidence that the parties have correctly understood the case. It is therefore, now possible for me, after proper appreciation of evidence and after scrutiny of the documents on record, to find out whether the plaintiffs were, in fact, prejudiced or whether their objections were considered or not and whether their objections to acquisition were in fact justified. If on examination of the evidence, it is found that in the facts of this case the acquisition is a compelling necessity; that the plaintiffs were not prejudiced; that they correctly understood the reasons for acquisition; that they submitted their objections and those objections were considered then even if the notice does not contain all the particulars, it would not be necessary for me to interfere with the impugned judgment and decree on that count. However, if in the ultimate analysis, it is found that the plaintiffs are prejudiced and acquisition is malafide; bad in law and not necessary at all, then the impugned judgment and decree may have to be set aside in the light of the judgment of this court in **Shyamrao Potdukhe's case (supra)**.

25. It is now necessary to turn to the evidence on record. The affidavit of evidence-in-chief was filed by plaintiff 3. In his affidavit, he has stated that the suit property is structurally safe and no acquisition is necessary. It is further stated that the buildings are constructed with teak-wood columns, beams, joints with teak-wood roof truss supporting mangalore tiles; that the structural members are in good condition and do not require any repairs; that the structures are in plumb and in straight line; that all the load bearing walls are in good condition; that the buildings are not supported on props except at one place near the toilet passage. It is further stated that the structures were not included by the B.M.C. or by the Board in the list of dilapidated or dangerous structures in Mumbai City and that the Corporation had never issued any notices in the past for major structural repairs. Reliance is placed in the affidavit on the report of M/s. Talib & Associates dated 2/4/1998. It is further stated that defendant 3 did not record any finding nor was the result communicated to the plaintiffs. No speaking order was passed. It is stated that the inspection carried out by defendant 3 is visual. No tests ware carried out.

26. In the cross-examination, plaintiff 3 has stated that he is not aware whether the buildings were constructed prior to 1940. He has showed ignorance about the complaint submitted by his tenants about the

dilapidated condition of the buildings. He has reiterated that the buildings are not dilapidated.

27. The evidence of plaintiff 3 can hardly inspire confidence. It is a fact that tenants of the suit property have submitted a complaint dated 17/9/1984 to the MHADA. It is on record at Ex-2. Inspite of this, plaintiff 3 has feigned ignorance about this complaint. Though the building is of 1940 vintage, plaintiff 3 has refused to admit it. Though he has tried to create an impression that the building is sound and safe, he has admitted that at one point, near nahani some repairs are necessary. He could not help admitting that at one place near the toilet passage props are put up. He has also stated that the toilet passage was recently repaired by the MHADA. Therefore, his claim that the buildings are not in dilapidated condition is, on his own showing, unacceptable.

28. It is significant to note that plaintiff 3 has admitted that after receipt of notice from defendant 3, he had appeared along with his advocate before defendant 3 and his advocate had made submissions on his behalf. It is clear, therefore, that opportunity was given to the plaintiffs to put up their case before the defendants. He has admitted that there was a hearing before defendant 3 and he was heard. Therefore, there is no substance in the contention that any arbitrary action was taken by the defendants without hearing the plaintiffs.

29. The plaintiffs also examined their architect Mr. Tofique Enayat Talib. Mr. Talib has stated that he knows the plaintiffs and he had inspected the suit buildings, prepared his notes and submitted his report. He has produced the said report which is marked at Ex-D. He has stated that as per his opinion, the buildings are stable and not in a dilapidated condition.

30. Report of Mr. Talib, inter alia, states that the buildings are structurally safe and sound. They do not require repairs except at one or two places, the structure is very much in plumb and in straight line and all load bearing walls are in good condition and even if the joints and beams are not replaced immediately, it will not affect the remaining structure; that except at one place near toilet passage, no props are put and that B.M.C. and the Board has not included these buildings in the list of dilapidated structures in Mumbai and no notices were sent for their repairs.

31. In the cross-examination, Mr. Talib has admitted that during the inspection of toilet blocks, he found 3-4 props. He has admitted that at some places, the teak-wood joints were in decaying condition and some nahanis were leaking. He has further admitted that in some portion of teak-wood there are white ants and at the external walls of the buildings, there are cracks.

32. These admissions, in his cross-examination, make his assertion that the buildings are not in a dilapidated

condition, suspect. The trial court is right in not relying on the report submitted by Mr. Talib because he is the plaintiffs' architect. He has admitted that the plaintiffs give him regular work. Having regard to the other evidence on record, I find it difficult to rely on the evidence of Mr. Talib and his report.

33. Mr. Bajirao Walekar is the Deputy Engineer of the Board. He has stated that the tenants of the suit property had sent complaint stating that it is in dilapidated condition. The said complaint dated 17/9/1984 is at Ex-2. He has stated that thereafter the report of the architect Mr. Pandya was obtained. That report is dated 22/11/1994. He has produced the said report which states that the buildings need to be reconstructed. According to him, Mr. Pandya was then appointed as the architect for this project. He has stated that thereafter, plans were got sanctioned from B.M.C. on 5/1/1996. He has produced the relevant documents and sanctioned plans which are at Ex-4(Colly.) According to Mr. Walekar, the proposal was sanctioned in the meeting dated 8/12/1995 and the administrative approval was recorded. He has further stated that the said proposal was accepted by the Government vide letter dated 15/3/1997 and, on 21/3/1997, the gazette notification was published in that regard. He has produced the said gazette notification, which is at Ex-5. He has further stated that in pursuance to the notice dated 1/8/1998, hearing was given to all the tenants and after that final notification was issued. He has stated

that as per the record of the Board, the suit property is in a dilapidated condition. He has produced 16 photographs of the suit property.

34. In his cross-examination, he has stated that he had inspected the buildings and found that some props were put up at some portions of the buildings. According to him, during inspection, he had not seen any wall or the bend to any wall but he had observed that at the beam of the roof some stums were decayed due to water leakage. He is consistent about the condition of the buildings in his cross-examination.

35. The defendants have also examined photographer Mr. Kisan Bhat, who has taken photographs of the suit property. He has proved 16 photographs of the suit property which are marked as X-2 (Colly.). I have seen these photographs. These photographs completely bear out the case of the defendants that the suit property is in a ruinous condition and needs to be demolished. The only criticism levelled against this witness is that he has taken photographs as directed by the defendants. In my opinion, if the photographs are taken from any angle, they would show that the suit property is in a precarious and dangerous condition.

36. DW-3 is architect Mr. Pandya. He has produced his inspection report, which is at Ex-13. He has admitted that he has carried out visual inspection. He has clarified that he felt that hammer test and ultrasound

test were not necessary. Much is tried to be made out about his statement that he did not find any wall out of plumb which was likely to fall down or any columns or beam which were required to be immediately replaced. This statement does not suggest that the buildings were safe and sound. Immediate replacement may not be necessary. But that does not obviate the need of demolition which is made out by the evidence on record.

37. DW-4 is one Laxmidas Shah, who is an architect and Government approved valuer. He has stated that he had prepared the plans, which were sanctioned by the BMC in the year 1996. The plans were revised and were sanctioned on 26/4/1999. He has also stated that he had prepared the report of inspection of the building and as per that report, the buildings required major repairs. He has further stated that the buildings were found in a dilapidated condition about which, he had given his report, which is at Ex-16. He has gone on to add that as per his technical point of view all the buildings were required to be reconstructed. He reiterated in his cross-examination that the buildings were in dilapidated condition. He has further gone on to add that even in his visual inspection, he found that the tenements were in a dangerous condition.

38. The defendants' witness Mr. Vasant Rathod is the Under Secretary, Government of Maharashtra, Housing Department. He has stated that on 4/11/1996, a proposal was moved for acquiring the suit property under section

41 of the MHADA Act. The said proposal was approved by the Government on 15/2/1997. On 15/3/1997, the preliminary notice was issued. Objections were invited. After hearing the parties, the Special Land Acquisition Officer and the Ex-Deputy Secretary submitted the proposal to the Government. After examining the proposal on 31/5/1999, the final notification was declared. The objections raised by the parties were found to be baseless. He has filed the plan regarding reconstruction of the suit property. The said plan is at Ex-20. His cross-examination has not affected his credibility.

39. The above evidence clearly establishes that the suit property is in a precarious condition. Merely because the suit property was not included in the list of dilapidated buildings published by B.M.C. or MHADA that does not mean that the suit property is safe and sound. There is also no substance in the contention that the defendants' architects have merely carried out visual inspection and, hence, their report cannot be relied upon. Mr. Pandya, the defendants' architect has clearly stated that hammer and ultrasound test was found not necessary by him. Justification for this statement is found in the photographs of the suit property, which are on record, which show the ruinous condition of the suit property. The complaint submitted by the tenants also supports the defendants' case. The defendants, therefore, cannot be faulted for having taken a decision to acquire the said property.

40. The evidence on record clearly establishes that the plaintiffs and their advocates were heard. Plaintiff 3 has admitted this. Their objections were considered. It is, however, contended by the plaintiffs that a speaking order ought to have been passed rejecting the objections and it ought to have been communicated to the plaintiffs.

41. In this connection, reliance placed by the defendants on the judgment in **Mukund Porobo Colvalkar's case (supra)** is apt. In that case, similar provisions of Land Acquisition Act fell for consideration before the court. The question was whether after hearing the objections under section 5-A of the Land Acquisition Act, 1894, the decision of the land owners' objections is required to be communicated to him. After considering the relevant provisions, it was held that -

> "The Government need not write its decision after perusing the report of the Collector. If it comes to the conclusion after perusing the report of the Collector that the land should be acquired it will issue notification under Section 6 of the Act and otherwise it will drop the proceeding. I find practically no strength in the contention of the petitioner that the notification issued in this case under Section 6 of the Act is invalid for the Government not giving decision about the objections of the petitioner raised under

Section 5-A of the Act, because in my opinion the Government's decision is the notification issued under Section 6 of the Act."

42. I find no difficulty in applying the ratio of this case to the present case. It is established that the plaintiffs and their advocates were heard and their objections were taken on file. Undoubtedly, the notification dated 31/5/1999 issued by the Government is the order passed after considering the objections. Therefore, there is no merit in the contention that there is no speaking order. Moreover, this notification is published in the Government Gazette and a copy thereof appears to have been served on the plaintiffs. It is significant to note that, in this notification, there is a reference to the cause shown by the owner to the show cause notice and it is stated that the cause has been considered by the Government and it is decided to acquire the suit property. It is clear, therefore, that the objections of the plaintiffs were rejected and decision to acquire the suit property was taken. It was not necessary for the Government to pass a separate order.

This submission must, therefore, fail.

43. I also find substance in the submission of the learned counsel for the defendants that from the statements made by the plaintiffs in their written statement before defendant 4 it appears that the plaintiffs are also interested in developing the suit

property. If that was so, the plaintiffs ought to have, at the earliest, approached the authorities with the consent of the 70% tenants as provided in the Development Control Regulations. The plaintiffs have failed to do.

44. In my opinion, so far as the preliminary objections raised by the defendants on the maintainability of the suit on the ground of limitation and pecuniary jurisdiction are concerned, it is not necessary to go into these objections because even if it is assumed in favour of the plaintiffs, that the suit is maintainable, for the reasons stated by me, the suit could never have been decreed. The trial court has correctly dismissed the suit. The appeal is, therefore, dismissed as being without substance.

45. At this stage Mr. Karande, the learned counsel for the plaintiffs states that the order be stayed for eight weeks. Mr. Mattos, the learned counsel for the defendants objects. He states that the buildings are in extremely ruinous condition. Out of 219 tenants, all have shifted except 26 tenants. If the stay is granted, it would only result in stalling the reconstruction of the buildings, which are in extremely dilapidated condition. In the circumstances of the case, the operation of the order is stayed only for a period of six weeks.

46. C.C. expedited.

(SMT. RANJANA DESAI, J.)